



**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION )  
OF KMC TELECOM V, INC. FOR )  
AUTHORITY TO PROVIDE AND )  
RESELL LOCAL EXCHANGE AND INTRA- )  
STATE TOLL TELECOMMUNICATIONS )  
SERVICES IN THE STATE OF NEW )  
JERSEY )

ORDER OF APPROVAL

DOCKET NO. TE00040255

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated April 28, 2000, KMC Telecom V (Petitioner or KMC V) filed a verified petition with the Board of Public Utilities (Board) requesting authority to provide facilities based and resold local exchange and intrastate toll telecommunications services in the State of New Jersey. Petition at 1. KMC V submitted additional documentation by letters dated May 15, 2000 and June 15, 2000. Petitioner as part of its May 19, 2000 letter response to a Staff questionnaire and letter of June 15, 2000 stated that the marketing information submitted with the May 19, 2000 and June 15, 2000 letters, as well as its pro-forma financial information is confidential and requested to have it protected from public disclosure. May 19, 2000 Letter at 1, June 15, 2000 Letter at 2, 3 and 4.

According to the petition, KMC V is a privately held corporation organized and existing under the laws of the State of Delaware. It was incorporated on March 15, 2000. Petition at 2. Petitioner's principal offices are located at 1545 Route 206, Suite 300, Bedminster, New Jersey 07921. Ibid. Petitioner submitted copies of its Certificate of Incorporation, New Jersey Certificate of Good Standing and its New Jersey authority to operate as a foreign corporation. Id. at 2, Exhibit A and B. According to the petition, KMC V was formed to provide local exchange and intrastate toll services. Id. at 1. Petitioner advised that KMC V is not currently certified to provide telecommunications services in any other state, but that its affiliates are authorized to provide local exchange and/or interexchange telecommunications services in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. Id. at 5. In addition, KMC V is currently seeking authority to provide local exchange and intrastate interexchange services in Arizona, California, Connecticut, Delaware, Iowa, Maine, Massachusetts, New York, Pennsylvania, Rhode Island, Washington, D.C. and West Virginia. Id. at 5. Petitioner has not been denied authority to provide telecommunications services in any State. In addition, Petitioner has no pending civil, criminal or administrative action against it. Id. at 5.

Petitioner advised that it has issued an “opt-in” letter to Bell Atlantic-New Jersey, Inc. (BA-NJ) on May 23, 2000 for the BA-NJ-MCI Metro agreement. June 15, 2000 letter at 2.

In its petition and May 19, 2000 questionnaire response, Petitioner advised that its initial plans are to provide telecommunications services, to medium and large business only throughout New Jersey, with some service provisioning on a wholesale basis to other carriers. Petition at 4, 6; June 15, 2000 letter at 2. KMC V stated that it intends to initially offer port wholesaling services to large bandwidth users and over time to also offer ISDN, HSDL, Internet Access, Frame Relay and ATM. Id. at 4, 6.

Petitioner requested a waiver of rules which require keeping books and records in accordance with the Uniform System of Accounts (USOA) and which require the filing of exchange area maps. Id. at 10. KMC V advised it is willing to provide service area maps upon request of the Board. Ibid.

Petitioner asserted that approval of its petition will further the public interest because it will provide New Jersey customers with complete solutions to data communications needs and by building “geographically extensive full service facilities-based networks.” Id. at 1-2. In addition, Petitioner stated that it intended to make a significant investment in the State of New Jersey and provide employment opportunities for New Jersey residents. Id. at 2.

With regard to its managerial qualifications, Petitioner stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Id. at 3. Petitioner submitted the professional biographies of its key personnel which, according to Petitioner, are well qualified to manage and operate a communications services company having extensive managerial and technical experience in the telecommunications industry. Id. at 3, Exhibit C.

Petitioner stated that it has access to the financial capital necessary to conduct the telecommunications operations of the requested services, and has submitted as evidence the audited Balance Sheets, Statement of Operations, Cash Flow Statement and SEC Form 10-K of its parent company, KMC Telecom Holdings, Inc., upon which it will rely. Id. at 8-9.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253 (a)].

Therefore, Board approval of Petitioner’s entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.(b)(1) and (3).

Therefore, having reviewed KMC V's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and intrastate toll telecommunications services in New Jersey subject to approval of its tariff. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board. Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief, from its requirements to maintain its books and records under USOA. Therefore, the Board APPROVES Petitioner's request for the exemption from N.J.A.C. 14:1-4.3 which requires that it maintain its books and records under the USOA. The Board also APPROVES KMC V's request for a waiver from the requirement to submit service area maps.

With regard to Petitioner's financial statements and marketing information as submitted in its letter of May 19, 2000 and letter of June 15, 2000, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1 that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that this financial and marketing information be kept under seal.

DATED: 8/11/00

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
HERBERT H. TATE  
PRESIDENT

(signed)  
CARMEN J. ARMENTI  
COMMISSIONER

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
SECRETARY